IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

W.P(C).No. 11905 of 2004(S)

PETITIONER:

K.M.CHANDRASEKHARAN, KALALAYAM HOUSE,
EROOR P.O., TRIPUNITHURA, ERNAKULAM DISTRICT.

BY ADV. SRI.P.SANJAY
SMT.A.PARVATHI MENON

RESPONDENTS:
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1. UNION OF INDIA REP. BY SECRETARY,
DEPARTMENT OF SPACE, ANTHARIKSHA BHAVAN,
BANGLORE.

2. THE EMPLOYMENT OFFICER,
EMPLOYMENT EXCHANGE, CIVIL STATION,
KOCHI-30.

3. THE ADMINISTRATIVE OFFICER,
RECRUITMENT SECTION,
VIKKAMSARABHAI SPACE CENTRE,
THIRUVANANTHAPURAM-695 022.

4. P.SOBHA, TC.4092, IST PUTHEN STREET,
MANACAUD P.O., TRIVANDRUM-695 009.

5. MADHURI KANJRAVILAKOM PUTHEN VEEDU,
KONNAMODU, KODANAVILA, TRIVANDRUM- 695 123.

6. S.OMANA, THOTTARIKATHU VEEDU,
THATTATHUMALA VIA, ADAYAMON P.O.,
KILIMANOOR.

7. K.BABU, KOYILI HOUSE,
KANHIRODE STREET,
KANHIRODE P.O.,
KANNUR - 670 592.

8. B.LATHA, PATHARUPARAMBIL HOUSE,
PARAVOOR, PUNNAPPARA P.O.,
ALAPPUZHA - 680 004.

9. P.M.SURESH BABU, PUTHIYOTTIL MEETHAL,
PURAMERI P.O., VIA VADAKARA,
KOZHIKODE - 673 503.

10. A.B.CELINE, F-44,
SANTHI NAGAR, KIZHAKUTTOM P.O.,
TRIVANDRUM - 695 582.

BY ADV. SMT.T.D.RAJALAKSHMI, SCGSC
SRI.P.N.SANTHOSH
SMT.K.P.GEETHA MANI
SRI.S.KRISHNAMOORTHY, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE REQUISITION DATED 14.5.1993.

EXT.P2: COPY OF THE LETTER NO.VSSC/RMT/9.0/16/EE-827 DATED 21-4-1994.

EXT.P3: COPY OF THE OFFICE MEMORANDUM DATED 29-7-1994.

EXT.P4: COPY OF THE ORDER/JUDGMENT DATED 26-3-1997.

EXT.P5: COPY OF JUDGMENT IN O.P.NO.16549/97 DATED 1-8-2003.

EXT.P6: COPY OF THE JUDGMENT IN O.A.NO.1223/95 DATED 28-1-2004.

RESPONDENTS EXHIBITS:

EXT.R1: COPY OF OFFICE MEMORANDUM NO.36012/22/03-ESTT(SCT) DT.03-02-1994 ISSUED BY THE GOVT. OF INDIA MINISTRY OF PERSONNEL, PUBLIC GREIVANCES AND PENSION, NEW DELHI.

EXT.R1(a):COPY OF OFFICE MEMORANDUM HQ: ADMN:A:20(2) DT.26-07-2003 ISSUED BY THE ISRO HEAD QUARTERS, BANGALORE.

TRUE COPY

P.A.TO JUDGE

K.A.ABDUL GAFOOR
&
ANTONY DOMINIC, JJ

W.P.(C).11905/2004 (S)

Dated this the 13th day of February, 2007

JUDGMENT

K.A.Abdul Gafoor, J.

The grievance of the writ petitioner is that though he had been ranked as No.12 in the list prepared for appointment to the post of Office Clerk 'A', pursuant to Ext.P1 requisition to an Employment Exchange, he was not appointed in spite of appointing 17 candidates there from. His contention is that the appointing authority had applied the reservation policy as contained in Ext.P3, though Ext.P1 recruitment process commenced as early as on 14.5.1993. The appointing authority closed his eyes towards para 3 of Ext.P3 which provides as follows:-

> "The above orders are to be made effective from 8.9.1993 and they do not apply to vacancies in respect of which the recruitment process was already initiated prior to 8.9.1993. The revised rosters as per the model roster communicated by DPT are required to be opened w.e.f 8.9.1993

> and after closing the old rosters, the reservations to be carried forward in the previous rosters are to be entered in the new roster and action taken to fill the backlog".

3. Going by Ext.P1 requisition dated 14.5.1993, Ext.P3 reservation policy ought not have been applied to the recruitment and candidates ought to have been appointed based on the ranking, in which case he would have been appointed as one among the seventeen, chosen from the list. This contention was not adverted to by the Tribunal, when the Original Application was initially disposed of. He carried the matter to this Court and this Court in Ext.P5 judgment remanded the matter to examine the issue in the right perspective. The Tribunal considered the matter and passed Ext.P6 order, again rejecting the Original Application.

4. According to the Tribunal, only ten vacancies had been anticipated when the recruitment process, commenced as per Ext.P1. According to Ext.P1 ten candidates alone ought to have been appointed there from, without applying Ext.P3 reservation policy. Seven

candidates were further chosen from the list. It was irregular. Therefore, the petitioner ought not to have felt aggrieved.

5. When persons are chosen for the vacancies other than those notified in Ext.P1, necessarily Ext.P3 shall be applied, the petitioner submits, in which case the said seven persons ought not have been appointed by applying reservation. Only the fixed percentage of reservation ought to have been applied to the said seven vacancies, whether it is regularly made or irregularly made. Choosing of all the seven from the reserved communities was thus arbitrary. He had no opportunity to make this submission before the Tribunal, as these details were gatherable only from the statement of the respondents. Therefore, had the reservation been correctly applied to the seven vacancies, the petitioner would have been appointed as one among seven, he being No.12 in the merit list, after appointing the first batch of ten candidates.

6. It is submitted by the counsel for the first respondent that really the recruitment process started

not by Ext.P1, but by subsequent filling up of application by the candidates, sponsored by the Employment Exchange. It was in the year 1994. This was subsequent to Ext.P3. Therefore, reservation ought to have been applied to the recruitment process. But while appointing the candidates, due to inadvertent omission, the first ten candidates were appointed without applying the reservation principles. Therefore, later reservation principle had been applied and the second batch of seven candidates therefore consisted of those eligible for reservation benefits. Seven candidates were simultaneously appointed, to keep up the reservation principles contained in Ext.P3.

7. This contention cannot be raised in the light of Ext.P5 judgment of this Court. This contention ought to have been raised when the initial order had been challenged by the appellant, which resulted in Ext.P5 judgment.

8. Further contention that recruitment process did not commence with Ext.P1 is also not justified. When the Employment Exchange had been requisited to

sent 15 candidates each per vacancy by Ext.P1, it is the commencement of recruitment process. Consequently going by clause 3 of Ext.P3, as extracted above. The reservation principle ought not have been applied to the recruitment started as per Ext.P1 to the vacancies mentioned therein. Counter affidavit reveals that the vacancies for which Ext.P1 requisition had been made were ten. When ten candidates were appointed, the writ petitioner cannot find a place in the list of appointees, he being ranked No.12 in the list. But when further candidates were appointed from the list prepared pursuant to Ext.P1, whether it be applying the reservation principle or without applying the reservation principle necessarily, the 12th rank holder, namely the petitioner, has to find a place in the list of appointees. That cannot, in any way, whether in the guise of irregular appointees or appointment in excess of the vacancies notified, justified. The petitioner cannot be denied of appointment on any reason.

9. Consequently allowing the writ petition and setting aside Ext.P6 order of the Tribunal, there shall be

a direction to the respondents to appoint the writ petitioner in the post of Office Clerk 'A', if necessary creating supernumerary vacancies so that any incumbent already appointed shall not be affected adversely. This process shall be completed and appointment shall be made within two months from today. Taking into account of the lapse of time since the recruitment process, this benefits shall be confined to the writ petitioner alone.

The writ petition is allowed as above.

K.A.ABDUL GAFOOR, JUDGE

ANTONY DOMINIC, JUDGE

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